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Mr. Robert deV. Frierson
Secretary
Board of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

December 24, 2013

**Docket No. OP-1465
FRS-2013-0311-0001**

**Re: Comments of Mercer Networks on Proposed Interagency Policy Statement
Establishing Joint Standards For Assessing the Diversity Policies and
Practices of Entities Regulated by the Agencies and Request for Comment**

Dear Mr. Frierson:

This letter is in response to the notice of and request for comment on the proposed interagency policy statement establishing joint standards for the assessing the diversity policies and practices of entities regulated by the Federal Reserve, the Office of Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, Bureau of Consumer Financial Protection and the Securities and Exchange Commission ("the Agencies"). Mercer Networks would like to thank the Board for this opportunity to comment on these proposed standards.

Mercer is a leading global provider of consulting, outsourcing and investment services, with more than 25,000 clients worldwide. Mercer consultants help clients design and manage health, retirement and other benefits and optimize human capital. The firm also provides customized administration, technology and total benefit outsourcing solutions. Mercer's investment services include global leadership in investment consulting and multimanager investment management.

Senior managers and corporate labor and employment counsel from more than 200 *Fortune* 500 companies participate in networks and other activities that Mercer Networks ("Mercer") sponsors in order to improve compliance and management systems and practices in the areas of equal employment opportunity, affirmative action and diversity, and labor and employment law.

I. Overview

Mercer is very supportive of the shared objective of promoting diversity and inclusion in the financial industry. We agree to that the proposed self-assessment along with the voluntary disclosure will be a more effective approach to improving diversity and appreciate the creating a single standard across the regulated entities as it will foster consistency and collaboration across the agencies. Despite the stated goal of Section 342 being "to promote transparency and awareness of diversity policies and practices within the entities regulated" there is no indication of whether this disclosure is voluntary. The term "assessment" is not well defined and there is a lack of clarity around in what ways the agencies will seek to understand the diversity policies and practices of regulated entities beyond examination or supervision. If the goal of the agencies is to promote transparency and awareness of diversity policies, it would be helpful to understand in what ways the agencies will seek to understand these diversity policies and practices of the regulated entities. Generally, our concerns are as follows.

A. Disclosure of Information

This goal should be balanced with the entities' competing need to protect sensitive information which they may voluntarily disclose to the Agencies. There needs to be a safe-harbor protecting the self-assessments and data voluntarily submitted to the Agencies from disclosure to the public or other federal or state government entities, including as a result of requests under the Freedom of Information Act (FOIA).

It is critical that the privacy protections be incorporated in the final standards as voluntarily disclosed self-assessments would not otherwise be protected from disclosure to the public pursuant to FOIA exemption 8. 5 U.S.C. §552(b) (8) (involving bank examinations). Some of the data and information included in the self-assessments may fall within FOIA exemptions 4 ("trade secrets and commercial or financial information obtained from a person and privileged or confidential") and 6 ("personnel...files the disclosure of which would constitute a clearly unlawful invasion of privacy"). 5 U.S.C. §552(b) (4), (6).

The EEO-1 reports, which are mentioned in the proposed standards as a "valuable model" for analysis and assessment of diversity efforts, are protected from public disclosure. The EEOC is prohibited by federal statute from making public the employment data included in EEO-1 report. The EEOC FOIA regulations only allow the diversity and inclusion data to be made public to aggregate compilations and prohibit the disclosure of any data that could reveal the identity of an individual entity. 29 CFR §1610.18. Any self-assessment or data submitted voluntarily to the Agencies should be entitled to the same protections.

B. Proposal for a Lead Agency/Review of Self-Assessment Submissions

The Proposed Standards do not specify whether the self-assessments and other data are to be submitted voluntarily to one agency or multiple agencies. We propose that a "lead agency" be established to which an entity can submit voluntary diversity & inclusion data. It would be helpful to understand what happens with the data once the Agency is in receipt as it will "not use the examination or supervision process in connection with these proposed standards."

C. Proposal with Respect to Timing of Effective Date

The Proposed Standards do not specify a date by which self-assessments would be required to be completed or the frequency which they should be conducted. We would propose that the self-assessments be conducted every two years which the entity can have sufficient data to review and analyze.

II. Proposed Joint Standards

A. Organizational Commitment to Diversity and Inclusion

Flexible self-assessments and voluntary disclosure are appropriate means for promoting diversity. As the Proposed Standards are guidelines, entities should be able to assess their own workforce and outreach efforts as where they are in their D&I journey. As the Proposed Standards are guidelines, and not a directive, regulated entities have sufficient autonomy to create diversity and inclusion policies tailored to their unique circumstances. Additional clarity is required about terms "regular" and "periodic" related to education and training; regularity of D&I training will vary across industry.

In reference to the standard related to Chief Diversity Officer or equivalent, consideration should be provided to organizations that have D&I efforts established in a function or shared across businesses. In order for a D&I strategy to be effective, it requires shared ownership across functions as opposed to being centralized in one office or individual. D&I strongly integrated in Talent Management, Recruiting and other business unit routines will have the most impactful outcomes.

Finally, there are not any recommended practices with regard to "proactive steps to promote a diverse pool of candidates." By not spelling out what could be inappropriate proactive steps, regulated entities could be potentially setting aside quotas or engaging in other selection activities that are prohibited either by law or judicial opinions.

B. Workforce Profile and Employment Practice Practices

The U.S. Supreme Court has held that affirmative action employment policies are permissible only if such policies are (1) aimed at remedying a manifest imbalance in the relevant workforce; (2) temporary, seeking to eradicate traditional patterns of segregation; and (3) do not unnecessarily trammel the rights of non-beneficiaries. An affirmative action policy is aimed at achieving diversity that does not meet these requirements may be unlawful.

As the Proposed Standards are voluntary and a guide, each entity will have a different perspective on what is effective and appropriate for them. Not having a "one size fit all" approach to the standards will afford entities the flexibility to hire, develop and retain the greatest workforce and supplier pool and attract the broadest customer base. Dependent on culture and/or where an entity is in their D&I journey, accountability for D&I efforts will vary by organization and across the industry. Reference to "accountability" should state that entities are responsible for determining appropriate levels of management accountability for D&I efforts.

Leveraging the created AAPs and filed EEO1 reports, where applicable, avoids having to create additional reporting requirements to regulated entities, so this is appreciated. However, additional guidance could be given around what kinds of methodologies would be appropriate when doing the self-assessment. So to the degree where quantitative analyses cannot be done, qualitative measures hopefully will suffice.

C. Procurement and Business Practices—Supplier Diversity

Methods of evaluation should be based on best practices as determined by the entity and should be based on relevancy to the organization. Tier II information is difficult to obtain; demographics for contractors and subcontractors is covered by the FOIA exemption 6 ("personnel...files the disclosure of which would constitute a clearly unlawful invasion of privacy"). 5 U.S.C. §552(b) (4), (6). Supplier release of this information may violate federal law.

Consideration should be given to using the term 'access' to procurement opportunities as opposed to 'publicize'; entities may use a variety of methods or approaches to notify of procurement opportunities. Also any self-analysis should be consistent with the regulations under FAR or other state regulations that require such tracking so there are consistent approaches for companies that have coverage under these regulations as prime contractors or subcontractors. For larger businesses, procurement functions are already tracking measures against the metrics recommended, but for smaller organizations this will continue to be a challenge. So they should provide assistance or tools in how to do this.

D. Practices to Promote Transparency of Organizational Diversity and Inclusion

D&I strategy is proprietary and should be offered safe harbor protection. This is different and distinct from D&I policy statements or D&I mission statements.

Information of current workforce and supplier demographic profiles is covered by the FOIA exemption 6 ("personnel...files the disclosure of which would constitute a clearly unlawful invasion of privacy"). 5 U.S.C. 552(b) (4), (6). Release of this information may violate federal law.

Public disclosure of current or forecasted procurement opportunities may provide competitors with insights regarding strategy, market expansion, etc. and may fall within FOIA exemptions 4 ("trade secrets and commercial or financial information obtained from a person and privileged or confidential"). Release of this information may violate federal law.

Developmental programs that are internally created are proprietary and should not be disclosed publically – presence of the programs could be shared, but details withheld.

The areas that cause the most concern because for private employers are those regarded as proprietary and sensitive, and which are afforded under the Trade Secrets Act and other related data/privacy regulations.

Specifically, they are

- Current and forecasted employment (some) procurement opportunities (note some of this is impractical as many recruiting needs are created as-needed);
- The availability and use of mentorship and developmental programs for employees and contractors

III. Proposed Approach to Assessment

Clarity is required relating to the frequency of assessment and required disclosure; consideration should be given to avoid burdensome requirements. There needs to be a framework to activate approach and measure progress over time should be left to the discretion of the entity.

The wording of the legislation indicates that the manner and approach to measurement and evaluation of D&I policies and practices is to be determined by the entity. If this is not true, we need more guidance on applicable measures to be utilized over time.

Providing such competitive and sensitive data on public websites is excessive and raises questions about the effectiveness of how this public disclosure will improve overall organizational diversity. Also, from a practical standpoint, this requirement will cause additional administrative resources to create, update and manage this, which could be as burdensome and ineffective.

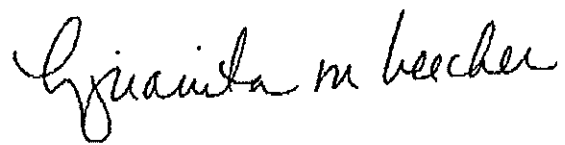
The section on "voluntary disclosure" needs to be defined further because data privacy laws and trade secrets/proprietary information that could potentially be shared with the agency, safeguards need to be provided in order for such information not to be made publicly available (including be requested under FOIA). More development in this area (including standards used to share, monitor and evaluate the data) should be considered so that such sensitive and confidential information are protected. Also, publicly sharing on websites of sensitive, proprietary business information should be limited.

Conclusion

Mercer would like to thank the Board for allowing it to submit a letter of comment on its proposed joint standards for assessing the diversity policies of regulated entities.

December 24, 2013
Letter to Frierson

Sincerely,

A handwritten signature in cursive script that reads "H. Juanita M. Beecher". The signature is written in dark ink and is positioned above the typed contact information.

H. Juanita M. Beecher
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